



Comptroller General
of the United States

Washington, D.C. 20548

Formica

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Decision

Matter of: Moore Heating & Plumbing, Inc.--
Reconsideration

File: B-246740.2

Date: July 22, 1992

Raymond Moore for the protester.
John Formica, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Prior decision denying protest that specifications for a project involving the rehabilitation and replacement of an underground steam distribution system are overly restrictive is affirmed where the agency has reasonably determined that a direct buried system will not meet its minimum needs in the particular application; the fact that the direct buried system proposed by the protester has been approved for use in projects similar to that contemplated by the solicitation does not negate the reasonableness of the agency's determination.

DECISION

Moore Heating & Plumbing, Inc. requests reconsideration of our decision in Moore Heating & Plumbing, Inc., B-246740, Apr. 1, 1992, 92-1 CPD ¶ 333, in which we denied Moore's protest that the specifications contained in invitation for bids (IFB) No. 568-2-92, issued by the Department of Veterans Affairs (VA) for a project involving the rehabilitation and replacement of an underground steam distribution system were overly restrictive of competition.¹

¹The project contemplates the rehabilitation or replacement of approximately 4,215 linear feet of the underground steam distribution system at the VA Medical Center in Fort Meade, South Dakota. The specifications in the IFB which Moore protested are for the replacement of 880 linear feet of direct buried main distribution lines with lines enclosed in a shallow concrete trench. A shallow concrete trench system uses a buried concrete pipe which is large enough to hold the set of steam lines. The steam and condensate pipes with insulation are hung on stands off of the trench floor. All
(continued...)

We affirm our prior decision.

In its original protest, Moore contended that the IFB was overly restrictive in prescribing the use of a shallow concrete trench underground system to the exclusion of, or without permitting as an option, the use of a direct buried piping system.

In response to the protest, the agency explained that both a concrete trench system and a direct buried underground system, as proposed by the protester, were initially considered for the replacement portion of the project. The agency explained that the use of a concrete trench system was ultimately specified in the IFB because it offers significant advantages over the direct buried system in terms of ease of maintenance and modification, and because the precast concrete trench covers would also serve the facility as sidewalks. With regard to maintenance considerations, which the agency noted were given high priority due to inadequate maintenance staffing levels at the facility, the agency explained that the trench system, by design, is easier to maintain because all sections of the enclosed piping are accessible through the removal of the system's ground-level concrete trench covers, as opposed to the excavation needed to expose lines installed via the direct buried method. As to ease of modification, the agency explained that it is planning the expansion of its facility at Fort Meade and that a trench system will allow for easier and less costly modifications to accommodate the expansion because, again, the trench covers can be removed and changes to the system can be accomplished without the excavation required to modify a direct buried system. The agency also noted that it had a direct buried system installed in a portion of its facility in 1986, and has had problems with the system in regard to leak detection and venting.

We concluded, based on this explanation and our review of the record, that the VA had demonstrated a reasonable basis for prescribing the use of a shallow concrete trench system without permitting as an option the use of a direct buried underground system, and that the IFB's specifications were thus not overly restrictive. Specifically, the record supported the agency's position in terms of the maintenance

¹(...continued)

water that gets in the trench is drained to a sump or storm sewer. In contrast, a direct buried piping system consists of steam and/or condensate line with insulation installed within another thinner pipe.

and modification advantages offered by the concrete trench system, and the use of the concrete trench covers as sidewalks.

To obtain reversal or modification of a decision, the requesting party must convincingly show either errors of fact or law or information not previously considered that warrants its reversal or modification. Corbin Superior Composites, Ltd.--Recon., B-242394.4, June 7, 1991, 91-1 CPD ¶ 547. Moore has made no such showing.

In its request for reconsideration, Moore contends that we misread the record in concluding that the agency could reasonably find that the concrete trench system is easier to maintain, and thus more desirable than a direct buried system. Moore suggests that we may have confused repair and maintenance of the system.

As discussed in our prior decision, the agency's position is based on the fact that with a concrete trench system, all sections of the enclosed piping are accessible through the removal of the system's ground-level concrete trench covers, as opposed to the excavation needed to expose lines installed via the direct buried method. Moore argues that the brochure it submitted, detailing the direct buried system that it would supply, clearly indicates that access to the piping is not needed to maintain the system, and that such access is only needed if, during the performance of maintenance, repairs to the system are found necessary.

We agree with Moore that the brochure it submitted specifies that repairs found necessary during the performance of maintenance require direct access to the piping, which requires excavation. This was one reason that we found reasonable the agency's position that a concrete trench system is more desirable: that excavation would not be required for repairs found necessary during the maintenance of a system installed by that method.

Moore also objects to our conclusion that it did not provide any basis on which we could find unreasonable the agency's determination that the modification of a concrete trench system would be less costly than the modification of a direct buried system. Neither the protester nor the agency provided any cost data to support their assertions in this regard. Based on our review, we simply found the agency's position--that the cost to modify a concrete trench system would be less because access to such a system for the purposes of modification can be gained by simply removing the concrete covers, as opposed to the excavation necessary to modify a direct buried system--more credible. The protester still has not provided any cost data in support of

its position concerning the cost to modify a direct buried system as opposed to the costs of modifying a concrete trench system.

Moore next objects to our determination that the agency had reasonably concluded that a concrete trench system was more desirable because the ground-level concrete trench covers could be used as sidewalks and because modifications to the system could be accomplished without the excavation needed to modify a direct buried system. Moore raises for the first time in its reconsideration request the argument that it can supply a direct buried system, which incorporates sidewalks in its design and requires no excavation to access, and, thus presumably, to maintain or repair. Our Bid Protest Regulations do not permit a piecemeal presentation of evidence, whether it be information or analyses, and where a party raises in reconsideration an argument that it could have, but did not raise, at the time of protest, the argument does not provide a basis for reconsideration. Marine Indus., Inc.--Recon., B-225722.2, June 24, 1987, 87-1 CPD ¶ 627. As Moore's argument here could have been raised at the time of its initial protest, but was not, it cannot now constitute a basis for reconsideration.


Moore finally contends that we misread the record and despite our contrary conclusion, the direct buried system it would provide has been found acceptable for use in projects such as the one contemplated by the agency here.² Moore also argues here that certain documents contained in the record support the assertion it made in its initial protest that it could supply a "problem-free [direct buried system] design."

We have reviewed the record, and while we find no reference to the system proposed by Moore as "problem-free," we concur that the system proposed by Moore has in fact been found acceptable for use in projects of the type contemplated by the agency here. However, this does not alter our conclusion that the agency had demonstrated a reasonable basis for

²The acceptability of direct buried underground heat distribution (UHD) systems is determined according to the performance standards contained in the Federal Agency Prequalification Procedure. The prequalification procedure is administered by the Federal Agency UHD Systems Committee which is comprised of representatives of the Army, Navy, Air Force, and the VA. The committee issues a letter of acceptability to a supplier whose system satisfies the prequalification criteria which entitles that supplier to furnish its system on direct buried UHD projects undertaken by the participating agencies.

prescribing the use of a shallow concrete trench system, without permitting as an option the use of a direct buried system such as that proposed by Mocre, because of the maintenance and modification advantages offered by the concrete trench system as well as the use of the concrete trench covers as sidewalks.³

Based on the foregoing, Moore has raised no facts that warrants reversal of our price decision. We affirm our prior decision.


for James F. Hinchman
General Counsel

³We contrast the present case from that in Moore Heating & Plumbing Inc., B-247417, June 2, 1992, 92-1 CPD ¶ ____, (reconsideration pending, Department of Air Force, B-247417.2) where we sustained Moore's protest because the agency provided no supportable reasons for not permitting the supply of a direct buried system.